

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 * * *

4 KIMBERLY ELIZABETH MIX,

Case No. 3:24-cv-00387-CLB

5 Plaintiff,

6 v. **ORDER GRANTING MOTION FOR**
REMAND7 LELAND DUDEK,¹
8 Acting Commissioner of the Social
9 Security Administration,

[ECF No. 12]

10 Defendant.

11 This case involves the judicial review of an administrative action by the
 12 Commissioner of Social Security ("Commissioner") denying Kimberly Elizabeth Mix's
 13 ("Mix") application for disability insurance benefits pursuant to Title II of the Social Security
 14 Act. Currently pending before the Court is Mix's motion for reversal and/or remand. (ECF
 15 No. 12.) The Commissioner filed a response, (ECF No. 15), and Mix replied, (ECF No.
 16 16). Having reviewed the pleadings, transcripts, and the Administrative Record ("AR"),
 17 (ECF No. 11), the Court grants Mix's motion for remand, (ECF No. 12).

18 **I. STANDARDS OF REVIEW**19 **A. Judicial Standard of Review**

20 This Court's review of administrative decisions in social security disability benefits
 21 cases is governed by 42 U.S.C. § 405(g). See *Akopyan v. Barnhart*, 296 F.3d 852, 854
 22 (9th Cir. 2002). Section 405(g) provides that "[a]ny individual, after any final decision of
 23 the Commissioner of Social Security made after a hearing to which he was a party,
 24 irrespective of the amount in controversy, may obtain a review of such decision by a civil
 25 action . . . brought in the district court of the United States for the judicial district in which

26
 27 ¹ Leland Dudek is now the Acting Commissioner of Social Security and is
 28 automatically substituted as a party pursuant to Fed. R. Civ. P. 25(d).

1 the plaintiff resides.” The Court may enter, “upon the pleadings and transcript of the record,
 2 a judgment affirming, modifying, or reversing the decision of the Commissioner of Social
 3 Security, with or without remanding the cause for a rehearing.” *Id.*

4 The Court must affirm an Administrative Law Judge’s (“ALJ”) determination if it is
 5 based on proper legal standards and the findings are supported by substantial evidence
 6 in the record. *Stout v. Comm'r Soc. Sec. Admin.*, 454 F.3d 1050, 1052 (9th Cir. 2006); see
 7 also 42 U.S.C. § 405(g) (“findings of the Commissioner of Social Security as to any fact,
 8 if supported by substantial evidence, shall be conclusive”). “Substantial evidence is more
 9 than a mere scintilla but less than a preponderance.” *Bayliss v. Barnhart*, 427 F.3d 1211,
 10 1214 n.1 (9th Cir. 2005) (internal quotation marks and citation omitted). “It means such
 11 relevant evidence as a reasonable mind might accept as adequate to support a
 12 conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting *Consolidated*
 13 *Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)); see also *Webb v. Barnhart*, 433 F.3d
 14 683, 686 (9th Cir. 2005).

15 To determine whether substantial evidence exists, the Court must look at the
 16 administrative record as a whole, weighing both the evidence that supports and
 17 undermines the ALJ’s decision. *Orteza v. Shalala*, 50 F.3d 748, 749 (9th Cir. 1995)
 18 (citation omitted). Under the substantial evidence test, a court must uphold the
 19 Commissioner’s findings if they are supported by inferences reasonably drawn from the
 20 record. *Batson v. Comm'r, Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004).
 21 “However, if evidence is susceptible of more than one rational interpretation, the decision
 22 of the ALJ must be upheld.” *Orteza*, 50 F.3d at 749 (citation omitted). The ALJ alone is
 23 responsible for determining credibility and for resolving ambiguities. *Meanel v. Apfel*, 172
 24 F.3d 1111, 1113 (9th Cir. 1999).

25 It is incumbent on the ALJ to make specific findings so that the Court does not
 26 speculate as to the basis of the findings when determining if substantial evidence supports
 27 the Commissioner’s decision. See *Gonzalez v. Sullivan*, 914 F.2d 1197, 1200 (9th Cir.
 28 1990). The ALJ’s findings should be as comprehensive and analytical as feasible and,

1 where appropriate, should include a statement of subordinate factual foundations on which
2 the ultimate factual conclusions are based, so that a reviewing court may know the basis
3 for the decision. See *id.*

4 **B. Standards Applicable to Disability Evaluation Process**

5 The individual seeking disability benefits bears the initial burden of proving
6 disability. *Roberts v. Shalala*, 66 F.3d 179, 182 (9th Cir. 1995). To meet this burden, the
7 individual must demonstrate the “inability to engage in any substantial gainful activity by
8 reason of any medically determinable physical or mental impairment which can be
9 expected . . . to last for a continuous period of not less than 12 months.” 42 U.S.C. §
10 423(d)(1)(A). More specifically, the individual must provide “specific medical evidence” in
11 support of their claim for disability. See 20 C.F.R. § 404.1514. If the individual establishes
12 an inability to perform their prior work, then the burden shifts to the Commissioner to show
13 that the individual can perform other substantial gainful work that exists in the national
14 economy. *Reddick v. Chater*, 157 F.3d 715, 721 (9th Cir. 1998).

15 The first step requires the ALJ to determine whether the individual is currently
16 engaging in substantial gainful activity (“SGA”). 20 C.F.R. §§ 404.1520(b), 416.920(b).
17 SGA is defined as work activity that is both substantial and gainful; it involves doing
18 significant physical or mental activities, usually for pay or profit. 20 C.F.R. §§ 404.1572(a)-
19 (b), 416.972(a)-(b). If the individual is currently engaging in SGA, then a finding of not
20 disabled is made. If the individual is not engaging in SGA, then the analysis proceeds to
21 the second step.

22 The second step addresses whether the individual has a medically determinable
23 impairment that is severe or a combination of impairments that significantly limits the
24 individual from performing basic work activities. 20 C.F.R. §§ 404.1520(c), 416.920(c). An
25 impairment or combination of impairments is not severe when medical and other evidence
26 establish only a slight abnormality or a combination of slight abnormalities that would have
27 no more than a minimal effect on the individual’s ability to work. 20 C.F.R. §§ 404.1521,
28 416.921; Social Security Rulings (“SSRs”) 85-28 and 96-3p. If the individual does not have

1 a severe medically determinable impairment or combination of impairments, then a finding
2 of not disabled is made. If the individual has a severe medically determinable impairment
3 or combination of impairments, then the analysis proceeds to the third step.

4 The third step requires the ALJ to determine whether the individual's impairment or
5 combination of impairments meets or medically equals the criteria of an impairment listed
6 in 20 C.F.R. Part 404, Subpart P, Appendix 1. 20 C.F.R. §§ 404.1520(d), 404.1525,
7 404.1526, 416.920(d), 416.925, 416.926. If the individual's impairment or combination of
8 impairments meets or equals the criteria of a listing and meets the duration requirement
9 (20 C.F.R. §§ 404.1509, 416.909), then a finding of disabled is made. 20 C.F.R. §§
10 404.1520(h), 416.920(h). If the individual's impairment or combination of impairments
11 does not meet or equal the criteria of a listing or meet the duration requirement, then the
12 analysis proceeds to the next step.

13 Prior to considering step four, the ALJ must first determine the individual's residual
14 functional capacity ("RFC"). 20 C.F.R. §§ 404.1520(e), 416.920(e). The RFC is a function-
15 by-function assessment of the individual's ability to do physical and mental work-related
16 activities on a sustained basis despite limitations from impairments. SSR 96-8p. In making
17 this finding, the ALJ must consider all the symptoms, including pain, and the extent to
18 which the symptoms can reasonably be accepted as consistent with the objective medical
19 evidence and other evidence. 20 C.F.R. §§ 404.1529 and 416.929; SSRs 96-4p, 96-7p.
20 To the extent that objective medical evidence does not substantiate statements about the
21 intensity, persistence, or functionally-limiting effects of pain or other symptoms, the ALJ
22 must make a finding on the credibility of the individual's statements based on a
23 consideration of the entire case record. The ALJ must also consider opinion evidence in
24 accordance with the requirements of 20 C.F.R. §§ 404.1527 and 416.927 and SSRs 96-
25 2p, 96-5p, 96-6p, and 06-3p.

26 After making the RFC determination, the ALJ must then turn to step four to
27 determine whether the individual has the RFC to perform their past relevant work. 20
28 C.F.R. §§ 404.1520(f), 416.920(f). Past relevant work means work performed either as the

1 individual actually performed it or as it is generally performed in the national economy
 2 within the last 15 years or 15 years prior to the date that disability must be established. In
 3 addition, the work must have lasted long enough for the individual to learn the job and
 4 performed at SGA. 20 C.F.R. §§ 404.1560(b), 404.1565, 416.960(b), 416.965. If the
 5 individual has the RFC to perform their past work, then a finding of not disabled is made.
 6 If the individual is unable to perform any past relevant work or does not have any past
 7 relevant work, then the analysis proceeds to the fifth and final step.

8 The fifth and final step requires the ALJ to determine whether the individual can do
 9 any other work considering their RFC, age, education, and work experience. 20 C.F.R. §§
 10 404.1520(g), 416.920(g). If the individual can do other work, then a finding of not disabled
 11 is made. Although the individual generally continues to bear the burden of proving
 12 disability at this step, a limited evidentiary burden shifts to the Commissioner. The
 13 Commissioner is responsible for providing evidence that demonstrates that other work
 14 exists in significant numbers in the national economy that the individual can do. *Lockwood*
 15 *v. Comm'r, Soc. Sec. Admin.*, 616 F.3d 1068, 1071 (9th Cir. 2010).

16 **II. CASE BACKGROUND**

17 **A. Procedural History**

18 Mix applied for disability insurance benefits (“DIB”) on March 23, 2022, with an
 19 alleged disability onset date of March 1, 2019. (AR 17, 211.) Mix’s application was denied
 20 initially on July 20, 2022, and again upon reconsideration on June 20, 2023. (AR 17, 66,
 21 76.) Mix subsequently requested an administrative hearing and on January 23, 2024, Mix
 22 and her attorney appeared at a telephonic hearing before an ALJ. (AR 17, 43-65.) A
 23 vocational expert (“VE”) also appeared at the hearing via telephone. (*Id.*) The ALJ issued
 24 a written decision on April 21, 2024, finding that Mix was not disabled. (AR 14-42.) Mix
 25 appealed, and the Appeals Council denied review. (AR 1-6.) Accordingly, the ALJ’s
 26 decision became the final decision of the Commissioner.

27 Having exhausted all administrative remedies, Mix filed a complaint for judicial
 28 review on August 28, 2024. (See ECF No. 1-1.) On October 28, 2024, the Commissioner

1 filed the Certified Administrative Record. (ECF No. 11.) On December 26, 2024, Mix filed
 2 a Motion to Remand and/or Reverse. (ECF No. 12.) On January 27, 2025, the
 3 Commissioner replied. (ECF No. 15.) On February 14, 2025, Mix replied. (ECF No. 16.)

4 **B. ALJ's Decision**

5 In the written decision, the ALJ followed the five-step sequential evaluation process
 6 set forth in 20 C.F.R. §§ 404.1520 and 416.920. (AR 14-42.) Ultimately, the ALJ found Mix
 7 had multiple severe impairments and could not perform any past relevant work but that
 8 based on the ALJ's RFC assessment, Mix could perform other work that existed in
 9 significant numbers in the national economy. (*Id.*) Thus, the ALJ found Mix had not been
 10 under a disability as defined in the Social Security Act from the alleged onset date, March
 11 1, 2019, through the date of the decision. (*Id.*)

12 In making this determination, the ALJ started at step one. Here, the ALJ found Mix
 13 had not engaged in substantial gainful activity since the date of the current application,
 14 March 23, 2022. (AR 19.) At step two, the ALJ found Mix had the following severe
 15 impairments: attention deficit disorder or attention deficit hyperactivity disorder, bipolar
 16 disorder, anxiety, and schizoaffective disorder/manic type. (AR 20-21.) The ALJ found that
 17 Mix's "medically determinable impairments [that] significantly limit the ability to perform
 18 basic work activities." (AR 20.) The ALJ also found Mix had "non-severe physical
 19 impairments that have no more than a minimal effect on her ability to perform basic work
 20 activities." (AR 21.)

21 At step three, the ALJ found Mix did not have an impairment or combination of
 22 impairments that either met or medically equaled the severity of those impairments listed
 23 in 20 C.F.R. Part 404, Subpart P, Appendix. 1; 20 C.F.R. §§ 404.1520(d), 404.1525, and
 24 404.1526. (AR 21-23.) The ALJ did find that claimant had "moderate limitations" in
 25 "understanding, remembering, or applying information," "interacting with others," and
 26 "concentrating, persisting, or maintaining pace," and a "mild limitation" in "adapting or
 27 managing oneself." (AR 21-23.)

28 Next, at step four, the ALJ determined the following RFC for Mix:

1 [A] full range of work at all exertional levels but with the following non-
2 exertional limitations: simple tasks; will be off task 3-5% of the workday;
3 occasional public and coworker interaction with no tandem tasks and no
transactional interactions; occasional supervisory interaction; and
occasional changes in the work setting.

4 (AR 23.) The ALJ found that Mix's medically determinable impairments could reasonably
5 be expected to cause some of the symptoms alleged. (AR 27.) However, the ALJ also
6 found Mix's statements concerning the intensity, persistence, and limiting effects of those
7 symptoms were not entirely consistent with the medical opinions and other evidence in
8 the record. (AR 25-37) In reaching this conclusion, the ALJ reviewed and discussed the
9 objective medical evidence, medical opinions, and other evidence in the record. (*Id.*) ALJ
10 found Mix's subjective limitations to be unreliable, particularly noting that Mix made
11 inconsistent statements about important facts and sometimes was inconsistent with the
12 doctors and clinicians. (AR 32.) The ALJ acknowledged that Mix had no past relevant work
13 and moved to step five of the analysis. (AR 35.)

14 At step five, relying on the testimony of the VE, the ALJ determined that based on
15 Mix's age, education, work experience, and RFC, Mix would not be able to perform her
16 past relevant work but found that there are other jobs that exist in significant numbers
17 in the national economy that Mix could perform. (AR 35-36.) Relying on the testimony of
18 the VE and the foregoing analysis, Mix would be able to perform work as a hospital cleaner
19 and a hand packer. (AR 36.) Accordingly, the ALJ found Mix had not been under a
20 disability since the date of the pending application, March 23, 2022, through the date of
21 the decision, and denied Mix's claim. (AR 36-37.)

22 **III. ISSUE**

23 Mix seeks judicial review of the Commissioner's final decision denying DIB under
24 Title II of the Social Security Act. (ECF No. 12.) Mix raises one issue for this Court's review:
25 whether substantial evidence supports the ALJ's RFC determination. (*Id.*)

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1 **IV. DISCUSSION**

2 Mix argues the ALJ's RFC determination lacks the support of substantial evidence.
3 (ECF No. 12 at 7-15.) Specifically, Mix challenges the ALJ's finding that Mix would be off-
4 task approximately three to five percent of the workday. (*Id.*) According to Mix, the ALJ
5 erred because the specific limitation that should be off task three to five percent of the
6 workday "is unsupported" and that the limitation is "based on nothing more than [the ALJ's]
7 lay opinion." (*Id.* at 7-8.) Mix argues remand is appropriate because the "ALJ fail[ed] to
8 build the logical bridge" and "show her work" between the off-task percentage and the
9 medical evidence. (ECF No. 16 at 5.) The Commissioner argues the ALJ did not error
10 because the ALJ viewed the entire record and the ALJ's decision does not mandate
11 remand even though no medical opinion or record justified the exact off-task percentage.
12 (ECF No. 15 at 3.)

13 The Court agrees with Mix and finds the ALJ erred in its RFC finding. While the ALJ
14 discussed in length Mix's subjective limitations and why they should be rejected, the Court
15 cannot reconcile the ALJ's ultimate RFC finding when reviewing the record as a whole. At
16 step two, the ALJ determined Mix suffers from multiple severe impairments, including
17 attention deficit disorder or attention deficit hyperactivity disorder; bipolar disorder; anxiety;
18 and schizoaffective disorder/manic type. (AR 21.) Thereafter, the ALJ found these severe
19 impairments to arise moderate and mild limitations at step three. (AR 21.) However, at
20 step four, the ALJ found that Mix's appropriate limitation for simple tasks was only three
21 to five percent of the workday. (AR 23.) In reviewing the record, the Court cannot
22 determine how the ALJ determined "3-5%" off-task was the appropriate limitation. (AR 23.)
23 At the January 23, 2024 hearing, the ALJ posed a hypothetical to the vocational expert
24 when asking what jobs Mix could do with a three to five percent limitation. (AR 62.) That
25 same limitation appeared in the ALJ's decision but without a single reference to anything
26 in the record as to how the ALJ came to "3-5%" limitation. The ALJ cites no medical opinion
27 or recognized authority that provides basis for this limitation. "While the ALJ 'can pick and
28 choose between opinions expressed by the experts,' when an ALJ decides severity or

1 residual functional capacity ‘without the support of any of the medical opinion evidence,’
 2 this is error.” See *Walker v. Comm'r of Soc. Sec.*, No. 2:22-cv-1871-EJY, 2024 WL 64784,
 3 at *6 (D. Nev. Jan. 4, 2024) (quoting *Holtan v. Kijakazi*, No. 2:22-cv-01222-VCF, 2023 WL
 4 2424648, at *3 (D. Nev. Mar. 9, 2023)). The ALJ’s decision here was not “comprehensive
 5 and analytical as feasible” such that the Court could determine the basis of the off-task
 6 limitations within her RFC assessment. See *Gonzales*, 914 F.2d at 1200; see also *Lovato*
 7 *v. Berryhill*, No. 6:16-cv-00046-JR, 2017 WL 2371096, at *6 (D. Or. May 9, 2017) (“Based
 8 on this record, the Court is unable to discern what substantial evidence supported the
 9 ALJ’s conclusion that plaintiff would be off task 9% of the time, beyond the VE’s testimony
 10 that a larger percentage would necessitate a finding of disability.”); *Oliverson v. Berryhill*,
 11 No. 2:16-cv-01538-KLS, 2017 WL 1381814, at *11 (W.D. Wash. Apr. 17, 2017) (“The
 12 Court also agrees with plaintiff that the ALJ failed to point to any evidence in the record —
 13 or offer any explanation — to support the limitation of being off task for up to 9% of the
 14 time. Accordingly, the ALJ erred here as well.”).

15 When the ALJ does not “explain the evidentiary basis” for an aspect of their RFC
 16 assessment, remand is appropriate. *Leitz v. Kijakazi*, No. 22-35356, 2023 WL 4342114,
 17 at *2 (9th Cir. Jul. 5, 2023). The court “cannot substitute [its] conclusions for the ALJ’s, or
 18 speculate as to the grounds for the ALJ’s conclusions.” *Treichler v. Comm'r of Soc. Sec.*
 19 *Admin.*, 775 F.3d 1090, 1103 (9th Cir. 2014) (citing *Bunnell v. Sullivan*, 947 F.2d 341, 346
 20 (9th Cir. 1991)). The ALJ’s failure to “build an accurate and logical bridge” from the record
 21 to her RFC assessment, and failure to “provide sufficient reasoning” precludes the Court
 22 from conducting meaningful review. *Lambert v. Saul*, 980 F.3d 1266, 1277 (9th Cir. 2020).

23 In this case, the Court cannot find the logical bridge between a finding of multiple
 24 severe impairments from step two that create moderate and mild limitations at step three
 25 of the analysis to an RFC assessment at step four that have virtually no limitations. The
 26 ALJ herself notes that the “above medically determinable impairments significantly limit
 27 the ability to perform basic work activities.” (AR 20.) The ALJ also states that the “claimant
 28 has also been diagnosed with schizophrenic spectrum disorder and other psychotic

1 disorders, but the longitudinal record does not substantially support that diagnosis." (AR
 2 21.) It is unclear how the ALJ concluded that Mix's diagnosed mental disorders—which
 3 several medical practitioners found would cause moderate limitations—were severe
 4 impairments but also found that the record did not support the diagnoses. See *Vaughn v.*
 5 *Berryhill*, 242 F. Supp. 3d 998, 1008 (E.D. Cal. 2017) ("[A]n ALJ is not allowed to use his
 6 own medical judgment in lieu of that of a medical expert.").

7 The Court acknowledges the ALJ's concerns regarding the reliability of Mix's
 8 subjective limitations and the medical opinions within the record. On remand, the ALJ
 9 should explain her RFC assessment more thoroughly as to the off-task percentage and
 10 establish the logical bridge between the severe impairments she found at step two and
 11 the moderate limitations at step three to the limitations implements into the RFC at step
 12 four. See *Lambert*, 980 F.3d at 1277. The ALJ should reconcile the moderate or significant
 13 limitations she finds that result from Mix's severe impairments with her ultimate RFC
 14 assessment. The ALJ should also reconsider the entire record in light of this Court's and
 15 the Ninth Circuit's precedent regarding claimants with disorders as what Mix has been
 16 allegedly diagnosed with:

17 [E]ven if Plaintiff experienced fair or relatively good mental health in
 18 between periods of decompensation, as a matter of logic, this does not
 19 mean that she will not continue to experience prolonged periods of
 20 decompensation (even if she takes her medication). Her medical providers
 21 continued to note the presence of anxiety or depression and continued to
 22 diagnose her with bipolar disorder or schizoaffective disorder as they
 23 observed Plaintiff's improvement in terms of having a "good" or "ok" mood,
 24 an appropriate affect, and appropriate thought process or content. As the
 25 Ninth Circuit has held, "[g]iven the episodic nature of bipolar disorder, short-
 26 lived improvements in functioning are consistent with the diagnosis and
 27 cannot, by themselves, constitute substantial evidence to override treating
 28 source opinions that [a plaintiff] was significantly impaired." *Buck v. Colvin*,
 540 F. App'x 772, 773 (9th Cir. 2023). As such, the Ninth Circuit has also
 held that a Commissioner can "erroneously" over-rely on "indications in the
 medical record that [the plaintiff] was 'doing well,' because doing well for the
 purposes of a treatment program has no necessary relation to a [plaintiff's]
 ability to work or to her work-related functional capacity." *Garrison v. Colvin*,
 759 F.3d 995, 1017 (9th Cir. 2014).

28 *Kiphart v. Berryhill*, No. 2:18-cv-02217-BNW, 2020 WL 1133254, at *17 (D. Nev. Mar. 6,

1 2020).

2 Because the Court finds error in the ALJ's RFC assessment, the Court agrees with
3 that remand is appropriate for further proceedings. Additional proceedings may remedy
4 the defects in the original administrative proceedings. See *Garrison*, 759 F.3d at 1011.

5 **V. CONCLUSION**

6 Based on the foregoing, the Court grants Mix's motion to remand, (ECF No. 12).

7 Accordingly, **IT IS THEREFORE ORDERED** that Mix's motion for remand, (ECF
8 No. 12), be **GRANTED**.

9 **IT IS FURTHER ORDERED** that this matter be **REMANDED** to the agency for
10 further proceedings in accordance with this Order.

11 **IT IS SO ORDERED.**

12 **DATED:** March 26, 2025



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14 **UNITED STATES MAGISTRATE JUDGE**
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